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STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS

Draft optional protocol to the International Covenant on Economic, Social and Cultural Rights

Report of the Secretary-General

Addendum

Introduction

By 16 March 1998, additional comments had been received from the Government of Canada and the non-governmental organization the International Council of Environmental Law. A summary of the former is contained in the present document.

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I. COMMENTS RECEIVED FROM STATES

Canada

[Original: English]
[6 February 1998]

1. All human rights are universal, and States are obliged to respect those rights, regardless of whether they are of an economic, social, cultural, civil or political character. However, it does not necessarily follow that all rights are easily amenable to or best implemented by an adjudicative-type process. The creation of an optional protocol to the International Covenant on Economic, Social and Cultural Rights may be premature where the core requirements of those rights have yet to be defined with precision.

Content of economic, social and cultural rights

2. Domestic courts and international bodies have examined extensively the scope and content of most civil and political rights, and identified the essential components of those rights which must be ensured by States. Grey areas remain, and the boundaries evolve over time, but the essence of the rights is known.

3. Economic, social and cultural rights are not similarly placed. Moreover, the difficulty of determining the core requirements of the rights in the Covenant is greatly exacerbated by the obligation in article 2 to achieve "progressively the full realization of the rights recognized in the ... Covenant". Progressive realization is not a concept which easily lends itself to adjudication, in that standards will vary according to circumstances. In the absence of consistent benchmarks, it is difficult for States to determine whether they are in compliance with their obligations under the Covenant.

4. Furthermore, the reference in article 2 to each State taking steps "to the maximum of its available resources" raises the important question of how such a "maximum" is to be determined, and by whom. Different systems of government have radically different approaches to resource allocation and management of their economies, which would make it difficult to apply a common standard.

5. Some examples may be illustrative:

(a) Does the right to work in article 6 of the Covenant oblige States to eliminate all unemployment? Is the Committee on Economic, Social and Cultural Rights in a position to identify an acceptable level of unemployment for a State party, given the complexities of the issue and, in particular, the Committee's role in promoting the Covenant? In other words, will the Committee find a violation whenever unemployment exists in a State or, alternatively, would the Committee be prepared to tell an individual complainant that his or her inability to obtain a job is consistent with the Covenant?

(b) Is the right to adequate food in article 11 of the Covenant satisfied by a State party's support for food banks or must there by government assistance equivalent to the cost of an adequate and nutritional diet?

(c) Does the requirement on States parties to take measures to "ensure an equitable distribution of world food supplies in relation to need" (art. 11) entitle the Committee to decide upon appropriate international aid policies for States parties?

6. For the above reasons, a more appropriate path may be for the Committee to delineate, with some precision, the scope and content of the rights in the Covenant, perhaps through the use of general comments. A better assessment could then be made of whether an adjudicative-type system is an effective mechanism for addressing such rights and, if so, how it should be structured (see below). Moreover, such an approach would give some concrete indication of what is expected of States parties, something which both States parties and potential complainants are entitled to know. Canada, and we believe the great majority of States, would find it very difficult to ratify an optional protocol in the absence of a clear understanding of the obligations that would be entailed.

Utility of an individual complaint system versus other review mechanisms

7. Within national systems, courts (where they have jurisdiction to do so) have typically felt ill equipped to make judicial determinations on quality of life issues and the tendency has been to intervene in dire circumstances only. This may reflect the difficulty of subjecting economic, social and cultural rights to an individual complaint structure which necessarily requires a finding of State compliance or violation and, concomitantly, a precise articulation of Covenant standards. In contrast, many problems in the economic, social and cultural rights domain are systemic in nature and better suited to a review resulting in broad recommendations, rather than narrow findings of fault in individual circumstances.

8. For example, as indicated above, it may be difficult for the Committee to decide whether one person's inability to find employment is a violation of the Covenant. The Committee might more effectively focus on the general circumstances in a State, such as the availability of vocational training, unemployment insurance, equal opportunity to seek employment, etc.

9. For these reasons, it is suggested that the utility of an individual complaint mechanism be weighed against other kinds of redress or review mechanisms. For example, an enhanced reporting system could focus on specific matters of concern in a State as identified by the Committee and, in addition, allow the Committee to make detailed recommendations specifically tailored to those identified areas of concern.

United Nations resources

10. The United Nations, particularly in the human rights field, suffers from inadequate resources and its bureaucracy is heavily overburdened. In light of these conditions, it should be asked whether, in the absence of a significant

increase in resources, the United Nations can sustain new complaint mechanisms and whether human rights will be most effectively advanced by this route. Under current circumstances, consideration might be given to better and more imaginative uses of existing procedures. For example, the Human Rights Committee has already considered some economic-related issues in relation to the guarantee of equality in article 26 of the International Covenant on Civil and Political Rights. Additionally, treaty-monitoring committees with existing authority to review communications could be encouraged to consult with any treaty-monitoring committee that has expertise relevant to a complaint under consideration.

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